

DOCKET FILE COPY ORIGINAL

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

RECEIVED

JUN 25 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Waiver of the Rules of the Federal) CC Docket No. 94-102
Communications Commission Relating)
to the Transmission of Digital Wireless) Cellular South Licenses, Inc.
911 Calls from TTY Devices)

To: Chief, Wireless Telecommunications Bureau

**PETITION FOR WAIVER AND EXTENSION OF
DIGITAL WIRELESS 911 TTY REQUIREMENTS**

1. Cellular South Licenses, Inc. (hereinafter "Petitioner"), by its attorneys, respectfully requests a waiver and extension of Section 20.18(c) of FCC Rules, 47 U.S.C. §20.18(c), and accompanying note. Specifically, Petitioner seeks a waiver and eighteen-month extension of the June 30, 2002 deadline by which digital wireless operators be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, e.g., through the use of Text Telephone Devices (TTY).

2. As set forth below, because circumstances exist wherein digital 911 TTY capability is not yet commercially available to Petitioner in a practical manner, Petitioner requests waiver of the deadline for digital 911 TTY capability. As demonstrated herein, good cause exists for this waiver because it is economically untenable and technically infeasible for Petitioner to comply with the June

No. of Copies rec'd 0+4
List ABCDE

30, 2002 deadline for digital 911 TTY implementation.^{1/} With respect to the Commission's 911 Phase II rules, the Commission has specifically provided that a waiver would be granted in such "instances where technology-related issues or exceptional circumstances may mean that deployment of Phase II may not be possible..."^{2/} This waiver policy is directly applicable to the June 30, 2002 deadline by which digital wireless providers must be capable of transmitting 911 calls using TTY devices.

Background and Facts

3. The FCC has adopted rules to implement Section 2(b) of the Wireless Communications and Public Safety Act of 1999, fulfilling the Congressional directive that wireless communications operators deploy a nationwide, seamless communications infrastructure for emergency services.^{3/} On December 1, 1997, the Commission adopted a *Memorandum Opinion and Order*, CC Docket No. 94-102, FCC 97-402, released December 13, 1997 ("MO&O") which, at para. 59, suspended until October 1, 1998 enforcement of the requirement that licensees providing service on *digital* wireless

^{1/} "The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest." *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (DC Cir 1990) citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (DC Cir 1969). Waiver of a Commission rule is appropriate where (1) the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and grant of the waiver is otherwise in the public interest, or (2) unique facts or circumstances render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, and there is no reasonable alternative.

^{2/} Revision of Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18,710, 18,718 (1996).

^{3/} Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, §2(b).

systems be able to transmit 911 calls made by individuals with speech or hearing disabilities. Suspension of enforcement of the subject Section 20.18(c) of the Commission's Rules was further extended until November 15, 1998,^{4/} and again until January 1, 1999.^{5/} Finally the Commission established the current deployment deadline of June 30, 2002.^{6/}

4. Petitioner is a Cellular Radiotelephone Service and Personal Communications Services licensee. Petitioner is well known within the service area for providing dependable wireless telecommunications service and for working closely with the community to meet the needs of residents and businesses, particularly special needs such as TTY capability. Petitioner relies upon its equipment vendor to make available all upgrades and updates to its operating systems software. As demonstrated herein, to become compliant with the digital 911 TTY requirements by June 30, 2000 is not "reasonably achievable" by Petitioner because it is technically infeasible for Petitioner to comply with the implementation deadline. Petitioner has determined that in order for it to be able to comply with the 911 TTY capability requirements, it must upgrade the existing operating systems software and other facilities. Although Petitioner has been seeking from its suppliers quotes and installation schedules for upgrades needed to make the switches compliant, response has been slow and information limited.

5. Petitioner will implement TTY/E911 capability, to the benefit of persons with speech and

^{4/} Order in CC Docket No. 94-102, DA 98-1982 (Wireless Telecommunications Bureau), released September 30, 1998.

^{5/} Order in CC Docket No. 94-102, DA 98-2323 (Wireless Telecommunications Bureau), released November 13, 1998.

^{6/} Fourth Report and Order, CC Docket No. 94-102, FCC 00-436, released December 14, 2000.

hearing disabilities, as soon as it is technically feasible and economically practical. Anticipating that it will be able to offer reliable TTY/E911 digital wireless service within the next eighteen months, Petitioner is also planning to participate in marketing, distribution and consumer education efforts as recommended by the TTY Forum or as adopted by the Commission. Petitioner recognizes the value of offering TTY/E911 connections as a part of its wireless digital service, and will seek to have the TTY/E911 feature implemented to full advantage, both as a matter of public health and safety and as a matter of good business practice.

Justification for Waiver

6. Petitioner has made efforts to meet the June 30, 2002 deadline, and has determined that compliance is not presently achievable due to the lack of equipment to facilitate compliance with Section 20.18(c) in an economically feasible and technically reliable manner. Petitioner operates Nortel digital switches at Mobile, AL and Jackson, MS. Both are equipped with software baseline MTX09 which is not conducive to delivery of 911 calls from TTY devices. To become TTY capable, the switches must be equipped with Nortel's software load MTX10. The transition to MTX10 for the two switches will require involvement by other vendors to modify the interface, and still others to modify the hardware in preparation for an MTX10 installation. Furthermore, Petitioner is informed that Nortel is discontinuing the Nortel 1900 TDMA MTX09 product now in use at Mobile, AL. Likewise, Petitioner's Lucent switches must be upgraded with products that are still being identified and whose costs and other implications are not yet known. For these reasons, additional months will be required to transition Petitioner's facilities to 911 TTY capability.

7. Petitioner has sought guidance from Nortel, Lucent and its other vendors, but no

satisfactory solution has been identified that would allow Petitioner to become 911 TTY compliant by June 30, 2002. The incremental nature of the necessary upgrades and the coordination required among vendors create an impediment to timely compliance over which Petitioner has no control. Nevertheless, Petitioner has a concrete plan for achieving full compliance. Implementation of Nortel DMS-MTX and Lucent Autoplex 1000 system upgrades for 911 TTY and the accompanying improvements are expected to be installed on all of Petitioner's systems by the end of 2003.

8. At the same time, Petitioner is beginning a transition to an alternative technology that, once operational, will be TTY compliant. Presently a TDMA carrier, petitioner has decided to overlay its markets with CDMA2000 1XRTT technology. Its first CDMA system has been implemented in Memphis, TN. Petitioner expects to spend more than \$40 million to upgrade Memphis and the other markets. The changes will require some swapping out of technology, including handsets. (There are no phones available that convert from TDMA to 1XRTT.) Nevertheless, the conversion will be undertaken because CDMA is viewed as the best choice to handle Petitioner's increasing voice traffic, as well as future data services. Should Petitioner be required by the FCC to upgrade its existing network immediately in order to become TTY compliant, there would be service disruptions due to technical problems and unnecessary costs would be encountered that ultimately would be passed on to the customer. Investment at this time to upgrade petitioner's existing network solely to achieve TTY compliance would be literally a lost investment. Such an outcome would be wholly inconsistent with the Commission's statutory directive to be particularly supportive of small carriers, and as such would not serve the public interest.

9. As demonstrated herein, Petitioner's compliance with the digital 911 TTY requirements by June 30, 2002 is not reasonably achievable because it is technically infeasible and financially

impractical. Petitioner continues to work closely with its equipment and software suppliers to institute TTY solutions in its wireless systems, and Petitioner intends to install compliant equipment as soon as it is commercially practicable to do so. In the meantime the public is being served by alternative solutions, including analog wireless TTY and landline TTY. Achieving digital wireless TTY functionality has been a priority for Petitioner's technical staff, but the service is not yet feasible. Significantly, Petitioner has received no customer requests for digital 911 TTY services.

10. To fully implement 911 TTY capability, Petitioner expects to spend well over \$1,000,000 on upgrades designed for that purpose. This figure is an estimate because Petitioner has been unable to secure specific quotes from its vendors for each element of required software, hardware, installation and other charges. Although requested, the figures have been delayed until the vendors can assign personnel to assess the projects. Clearly, the high cost of 911 TTY capability would be an unjust burden to place upon Petitioner at this time, especially in light of the impending deployment of Petitioner's new CDMA platform.

Request for Waiver

11. Petitioner requests a waiver of Section 20.18(c) in furtherance of the public interest. The unique and unusual circumstances surrounding the transmission of 911 calls using TTY devices on Petitioner's digital wireless system warrants special consideration by the Commission. Petitioner's inability to comply with the implementation deadline is due to circumstances beyond Petitioner's immediate control, rendering compliance by June 30, 2002 technologically unachievable and financially imprudent. An extension of time to comply would allow Petitioner, which offers high quality networks in rural areas, to implement digital 911 TTY in a fashion that will greatly benefit

Petitioner's subscribers, permitting a logical transition within Petitioner's network infrastructure. Further, at this time, digital TTY handsets are not readily available for use by small, rural providers. This consideration virtually assures that no large portion of the public will be harmed by grant of the subject waiver.

12. Enforcement of Section 20.18(c) requirements against Petitioner would only jeopardize Petitioner's plans for improved wireless services in a rural area of the United States. Petitioner consistently attempts to offer the best services possible to its subscribers, often in a more advanced form than those offered by much larger wireless providers. The FCC has stated numerous times that it seeks to be a proponent of the spread of telecommunications services to rural areas.^{7/} In this case, Petitioner requests the opportunity to continue with the high quality of service that it presently offers to its customers, and to be relieved of the immediate obligation to offer digital TTY/E911 transmissions, by means of a waiver of Section 20.18(c) the FCC's rules.

Conclusion

For the reasons explained, Petitioner requests a waiver of the Commission's requirements for transmission of 911 calls made from TTY devices using digital wireless systems, and, in particular, an eighteen-month extension of the June 30, 2002 date for commencement of compliance with Rule Section 20.18(c). Petitioner's showing herein is consistent with the requirements for waiver set forth by the FCC. Its request is specific, focused and limited in scope, and with a clear

^{7/} Report and Order In the Matter of Federal-State Joint Board on Universal Service 12 FCC Rcd 8776, 8799-8806 (May 7, 1997).

path to full compliance. Furthermore, the public interest benefit of such grant exceeds the benefit of enforcement of the deadline in this instance. Accordingly, Petitioner requests that a waiver be granted as proposed.

Respectfully submitted,

CELLULAR SOUTH LICENSES, INC.

By: Pamela L. Gist
David L. Nace
Pamela L. Gist
Its Attorneys

Date: June 25, 2002

Lukas, Nace, Gutierrez & Sachs, Chartered
1111 19th Street N.W., Suite 1200
Washington, D.C. 20036

Telephone: 202-857-3500

DECLARATION

I, Tony Kent, hereby state and declare:

1. I am Vice President of Network Operations for Cellular South Licenses, Inc., a Cellular Radiotelephone Services and Personal Communications Services operator and the petitioner herein.

2. I am familiar with the facts contained in the foregoing "Petition For Waiver And Extension of Digital Wireless 911 TTY Requirements" and I verify that those facts are true and correct to the best of my knowledge and belief, except that I do not and need not attest to those facts which are subject to official notice by the Commission.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 25th day of June, 2002.



Tony Kent

CERTIFICATE OF SERVICE

I, Loren Costantino, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chtd., do hereby certify that I have on this 25th day of June, 2002, sent by hand-delivery, a copy of the foregoing PETITION FOR WAIVER AND EXTENSION OF DIGITAL WIRELESS 911 TTY REQUIREMENTS to the following:

Thomas J. Sugrue, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C252
Washington, D.C. 20554

Mindy Littell
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-A161
Washington, D.C. 20554


Loren Costantino